

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

WILLIAM HODGES,

Plaintiff,

**9:10-cv-531
(GLS/GHL)**

v.

WRIGHT et al.,

Defendants

APPEARANCES:

OF COUNSEL:

FOR THE PLAINTIFF:

William Hodges
Pro Se
06-A-2600
Great Meadow Corr. Facility
Box 51
Comstock, NY 12821

FOR THE DEFENDANTS

HON. ERIC T. SCHNEIDERMAN
New York State Attorney General
Albany Office
The Capitol
Albany, NY 12224

ADRIENNE J. KERWIN
Assistant Attorney General

**Gary L. Sharpe
District Court Judge**

MEMORANDUM-DECISION AND ORDER

I. Introduction

Plaintiff *pro se* Willaim Hodges brings this action under 42 U.S.C. § 1983, alleging his constitutional rights were violated by defendants. (See Am. Compl., Dkt. No. 19.) In a Report-Recommendation and Order (R&R) filed September 29, 2011, Magistrate Judge George H. Lowe recommended that plaintiff's Amended Complaint be dismissed.¹ (See generally R&R, Dkt. No. 30.) Pending are Hodges's objections to the R&R. (See Dkt. No. 33.) For the reasons that follow, the R&R is adopted in its entirety.

II. Standard of Review

Before entering final judgment, this court routinely reviews all report and recommendation orders in cases it has referred to a magistrate judge. If a party has objected to specific elements of the magistrate judge's findings and recommendations, this court reviews those findings and recommendations *de novo*. See *Almonte v. N.Y. State Div. of Parole*, No. 04-cv-484, 2006 WL 149049, at *6-7 (N.D.N.Y. Jan. 18, 2006). In those cases where no party has filed an objection, or only a vague or general objection has been filed, this court reviews the findings and

¹ The Clerk is directed to append the R&R to this decision, and familiarity therewith is presumed.

recommendations of the magistrate judge for clear error. See *id.*

III. Discussion

Although docketed as an objection, Hodges fails to raise any errors in the R&R. (See *generally* Dkt. No. 33.) In fact, he states: “Plaintiff respects the decision and recommendations of the court and agrees to amending his claims.” (*Id.* at 2.) However, preceding this concession, Hodges renews his argument that Dr. DeAzevedo improperly treated his condition. (*Id.* at 1-2.) Because his assertions, even construed liberally, fail to state objections to the R&R, a *de novo* review is unnecessary.²

In adopting Judge Lowe’s recommendation, the court further cautions Hodges that, if he elects to file a Second Amended Complaint, it must be consistent with the R&R. The Second Amended Complaint must be filed within thirty (30) days of the date of this order and strictly comply with the requirements of, *inter alia*, N.D.N.Y. L.R. 7.1(a)(4) and Fed. R. Civ. P. 11(b). If plaintiff elects to file an amended complaint, defendants shall have fourteen (14) days to file the appropriate response, and/or renew their motion to dismiss.

² Notably, the facts alleged in the “objection” deal with Dr. DeAzevedo’s alleged mistreatment of Hodges condition. While these facts may be germane to a medical malpractice claim, they are irrelevant in a section 1983 action. (See R&R at 8.)

IV. Conclusion

Having found no clear error in the R&R, the court accepts and adopts Judge Lowe's R&R in its entirety.

WHEREFORE, for the foregoing reasons, it is hereby
ORDERED that Magistrate Judge George H. Lowe's September 29, 2011 Report-Recommendation and Order (Dkt. No. 30) is **ADOPTED** in its entirety; and it is further

ORDERED that defendants' motion to dismiss (Dkt. No. 22) is **GRANTED**; and it is further

ORDERED that all of plaintiff's claims are **DISMISSED** with leave to amend, except the New York Public Health Law claim, which is **DISMISSED WITH PREJUDICE**; and it is further

ORDERED that Hodges may—in accordance with the requirements of N.D.N.Y. L.R. 7.1(a)(4)—file a Second Amended Complaint, if he can, in good faith, allege sufficient facts to cure the deficiencies articulated in Judge Lowe's R&R, within thirty (30) days of this order; and it is further

ORDERED that the Clerk provide a copy of this Memorandum-Decision and Order to the parties by mail and certified mail.

IT IS SO ORDERED.

November 15, 2011
Albany, New York

Gary L. Sharpe
Gary L. Sharpe
U.S. District Judge